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MONTANA LEGISLATIVE HISTORY

Chapter 85 19 93

Bill H _____ S 29 Original bill & history ✓ C

H. Committee on Judiciary		S. Committee on Judiciary	
Hearing Date(s) 1-29	✓ C	Hearing Date(s) 1-6	✓ C
2-3	✓ C	1-13	✓ C
_____	___ C	_____	___ C
_____	___ C	_____	___ C
Date Out _____	___ C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

12/23	REFERRED TO FISH & GAME		
1/04	FIRST READING		
1/26	HEARING		
2/02	TABLED IN COMMITTEE		

SB 27 INTRODUCED BY KENNEDY

REMOVE CLASSIFICATION OF SUN RIVER GAME PRESERVE

12/23	INTRODUCED		
12/23	REFERRED TO FISH & GAME		
1/04	FIRST READING		
1/04	FISCAL NOTE REQUESTED		
1/08	FISCAL NOTE RECEIVED		
1/08	FISCAL NOTE PRINTED		
1/19	TABLED IN COMMITTEE		

SB 28 INTRODUCED BY KENNEDY

REQUIRE THAT SCHOOL BOARD MEETINGS BE IN A PUBLIC BUILDING WITHIN THE DISTRICT

12/23	INTRODUCED		
12/23	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/04	FIRST READING		
1/11	HEARING		
1/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/15	2ND READING PASSED	49	0
1/16	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
1/18	FIRST READING		
1/18	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/27	HEARING		
2/01	COMMITTEE REPORT—BILL CONCURRED		
2/04	2ND READING CONCURRED	96	2
2/06	3RD READING CONCURRED	92	3
	RETURNED TO SENATE		
2/12	SIGNED BY PRESIDENT		
2/14	SIGNED BY SPEAKER		
2/15	TRANSMITTED TO GOVERNOR		
2/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 50		
	EFFECTIVE DATE: 02/18/93		

SB 29 INTRODUCED BY TOWE

INCREASE PENALTY FOR GANG RAPE

12/23	INTRODUCED		
12/23	REFERRED TO JUDICIARY		
1/04	FIRST READING		
1/04	FISCAL NOTE REQUESTED		
1/06	HEARING		
1/11	FISCAL NOTE RECEIVED		
1/12	FISCAL NOTE PRINTED		
1/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/15	2ND READING DO PASS MOTION FAILED	24	24
1/18	2ND READING PASSED	26	21
1/19	3RD READING PASSED	29	21
	TRANSMITTED TO HOUSE		
1/20	FIRST READING		
1/20	REFERRED TO JUDICIARY		
1/29	HEARING		

2/05	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
2/09	2ND READING CONCURRED	100	0
2/13	3RD READING CONCURRED	98	0
	RETURNED TO SENATE WITH AMENDMENTS		
2/18	2ND READING AMENDMENTS CONCURRED	48	0
2/19	3RD READING AMENDMENTS CONCURRED	50	0
2/22	SIGNED BY PRESIDENT		
3/02	SIGNED BY SPEAKER		
3/02	TRANSMITTED TO GOVERNOR		
3/05	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 85		
	EFFECTIVE DATE: 10/01/93		

SB 30 INTRODUCED BY AKLESTAD

REQUIRE ASSESSMENT ON COMMODITY CREDIT CORPORATION GRAIN TO BE COLLECTED AT TIME OF PURCHASE

12/23	INTRODUCED		
12/23	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/04	FIRST READING		
1/04	FISCAL NOTE REQUESTED		
1/06	HEARING		
1/09	COMMITTEE REPORT—BILL PASSED		
1/11	FISCAL NOTE RECEIVED		
1/11	2ND READING PASSED	49	0
1/12	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/13	FIRST READING		
1/13	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
1/14	FISCAL NOTE PRINTED		
1/19	HEARING		
1/21	COMMITTEE REPORT—BILL CONCURRED		
1/23	2ND READING CONCURRED AS AMENDED	76	23
1/26	3RD READING CONCURRED	96	1
	RETURNED TO SENATE WITH AMENDMENTS		
2/08	2ND READING AMENDMENTS CONCURRED	49	0
2/09	3RD READING AMENDMENTS CONCURRED	48	0
2/11	SIGNED BY PRESIDENT		
2/14	SIGNED BY SPEAKER		
2/15	TRANSMITTED TO GOVERNOR		
2/18	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 51		
	EFFECTIVE DATE: 07/01/93		

SB 31 INTRODUCED BY BLAYLOCK

CLARIFY REIMBURSEMENT RATES IN SCHOOL DISTRICT TRANSPORTATION LAWS

BY REQUEST OF SCHOOL FUNDING, JOINT INTERIM SUBCOMMITTEE ON

12/23	INTRODUCED		
12/23	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/04	FIRST READING		
1/04	FISCAL NOTE REQUESTED		
1/08	HEARING		
1/08	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/09	2ND READING PASSED	48	0
1/11	FISCAL NOTE RECEIVED		
1/11	3RD READING PASSED	49	0

SENATE BILL NO. 29

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT WHEN TWO OR MORE OFFENDERS WERE INVOLVED; AND AMENDING SECTIONS 45-5-503 AND 46-18-231, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-503, MCA, is amended to read:

"**45-5-503. Sexual intercourse without consent.** (1) A person who knowingly has sexual intercourse without consent with another person commits the offense of sexual intercourse without consent. A person may not be convicted under this section based on the age of ~~his~~ the person's spouse, as provided in 45-5-501(1)(b)(iii).

(2) A person convicted of sexual intercourse without consent shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than $50,000, except as provided in 46-18-222.

(3) (a) If the victim is less than 16 years old and the offender is 3 or more years older than the victim or if the offender inflicts bodily injury upon anyone in the course of committing sexual intercourse without consent, he the offender shall be imprisoned in the state prison for any term of not less than 2 years or more than 40 years and may be fined not more than $50,000, except as provided in 46-18-222.

~~(b)~~ An act "in the course of committing sexual intercourse without consent" ~~shall--include~~ includes an attempt to commit the offense or flight after the attempt or commission.

(b) If two or more persons are convicted of sexual intercourse without consent with the same victim at the same time or during the same period of time, each offender shall be imprisoned in the state prison for a term of not less than 10 years or more than 25 years and may be fined not more than $100,000, except as provided in 46-18-222.

(4) In addition to any sentence imposed under subsection (2) or (3), after determining the financial resources and future ability of the offender to pay restitution as required by 46-18-242, the court shall require the offender, if able, to pay the victim's reasonable costs of counseling that result from the offense. The amount, method, and time of payment must be determined in the same manner as provided for in 46-18-244."

Section 2. Section 46-18-231, MCA, is amended to read:

"**46-18-231. Fines in felony and misdemeanor cases.** (1) Whenever, upon a verdict or a plea of guilty, a person has

SB 29
INTRODUCED BILL

been found guilty of an offense for which a felony penalty of imprisonment could be imposed, the court may impose a fine, only in accordance with subsection (3), and in lieu of or in addition to a sentence of imprisonment. For those crimes for which penalties are provided in 45-5-103, 45-5-202(3), 45-5-302(2), 45-5-303(2), 45-5-401(2), 45-5-502(3), 45-5-503(2) and (3), 45-9-101(2), (3), and (5)(d), 45-9-102(4), 45-9-103(2), and 45-9-109, a fine may be imposed in accordance with subsection (3) in addition to a sentence of imprisonment.

(2) Whenever, upon a verdict or plea of guilty, a person has been found guilty of an offense for which a misdemeanor penalty of a fine could be imposed, the court may impose a fine only in accordance with subsection (3).

(3) The court may not sentence a defendant to pay a fine unless the defendant is or will be able to pay the fine. In determining the amount and method of payment, the court shall take into account the nature of the crime committed, the financial resources of the defendant, and the nature of the burden that payment of the fine will impose.

(4) ~~Any~~ Except for a fine imposed upon conviction under 45-5-503(3)(b), a fine levied under this section in a felony case shall be in an amount fixed by the court and may not ~~to~~ exceed $50,000."

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0029, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act increasing the penalty for sexual intercourse without consent when two or more offenders were involved.

FISCAL IMPACT:

The fiscal impact, if any, cannot be determined.

Dave Lewis 1-9-93

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Thomas E. Towe 1/12/93

THOMAS E. TOWE, PRIMARY SPONSOR DATE

Fiscal Note for SB0029, as introduced

SB 29

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0014	SWIFT, BERNIE		ALLOW FIREARMS USE BY CHILD UNDER 14 IF ACCOMPANIED BY SPECIFIED INDIVIDUAL			
	12/23	1/05	1/06	PASS AS AMENDED 1-7		1/07
SB0019	BLAYLOCK, CHET		REVISE EXEMPTIONS FROM WRONGFUL DISCHARGE ACT			
	12/23	1/07		DO PASS 1-13		1/14
SB0023	AKLESTAD, GARY		REVISE LAW ON REMOVAL OF CHILDREN FROM THE HOME IN CASES OF ABUSE OR NEGLECT			
	12/23	1/15		DO PASS 2-16		2/16
SB0029	TOWE, TOM		PENALTY FOR GANG RAPE			
	12/23	1/06		PASS AS AMENDED 1-13		1/14
SB0037	TOWE, TOM		CREATE OFFENSE OF STALKING AND PROVIDE FOR RESTRAINING ORDERS			
	12/23	1/18		PASS AS AMENDED 1-25		1/26
SB0041	BURNETT, JIM		REVISE LAWS ON REMOVAL OF CHILD FROM HOME FOR ABUSE OR ENDANGERMENT			
	12/23	1/29	2/16	ADVERSE RPT ADOPT 2-19		2/19
SB0042	HARP, JOHN		CLARIFY SERVICE OF PROCESS IN ACTIONS AGAINST THE STATE			
	12/23	1/05		DO PASS 1-5		1/05
SB0046	HALLIGAN, MIKE		UNIFORM PARTNERSHIP ACT			
	12/23	1/12		PASS AS AMENDED 1-29		1/29
SB0055	TOWE, TOM		VEHICLE SEIZURE OR FORFEITURE FOR 3RD OFFENSE DRIVING WITHOUT INSURANCE			
	1/05	1/19		TABLED ON 01/28		
SB0064	DOHERTY, STEVE		EXEMPT ATTORNEYS' EMPLOYEES FROM PROCESS SERVER REGISTRATION REQUIREMENTS			
	1/02	1/12		PASS AS AMENDED 1-13		1/14
SB0068	BLAYLOCK, CHET		REMOVE TERMINATION OF GOVERNMENTAL TORT LIABILITY LIMITS			
	1/02	1/12		PASS AS AMENDED 1-28		1/28
SB0070	BROWN, BOB		COURT DISPOSITION OF TROUBLED YOUTH REQUIRING DEPT. FAM. SERV. TO SPEND $			
	1/02	1/15		PASS AS AMENDED 1-28		1/28

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, Chair, on January 6, 1993, at 10:05 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 12
	SB 29
Executive Action:	SB 14
	SB 1

HEARING ON SB 12

Opening Statement by Sponsor:
Senator Gage, District 5, opened SB 12. Senator Gage informed the Committee of the intent of SB 12 by reading from Exhibit #1.

Proponents' Testimony:
Cathy Kendall of the Board of Crime Control explained how SB 12 would bring compliance with federal law. Under this federal law the state can potentionally lose up to $200,000 in funds if the

counseling, if needed. Cathy Kendall relied, yes, it is available after all the requirements of the existing compensation are met.

Senator Bartlett asked if the victims are limited to one request for a test, and are the victims encouraged to postpone their own testing until sufficient time has passed for the infections to make themselves known. Cathy Kendall relied if SB 14 is adopted they will work with the Department of Health to develop some rules and procedures.

Closing by Sponsor:
Senator Gage closed by saying the intent of SB 14 is to preserve funding that comes to the state of Montana from the federal government, to give victims the feeling they have not been victimized by an incurable disease. Senator Gage further stated that this is a good bill that will help public safety, the citizens of Montana and give relief to people who are victims of sexual crimes.

HEARING ON SB 29

Opening Statement by Sponsor:
Senator Towe, District 46, opened with a letter by a constituent, Bob Court. Exhibit #4. Senator Towe told the committee SB 29 would increase the penalty for sex offenders engaged in gang rape with a minimum penalty of 10 years to a maximum of 25 years and may be fined not more than $100,000. SB 29 increases the penalty for the offense. Senator Towe stated society should look at this offense as being more serious and it should be treated more seriously because of the communal nature of the crime.

Proponents' Testimony:
Diane Sands, Montana Womens Lobby, supports SB 29. Ms. Sands stated if SB 29 passes, there is no evidence that indicates there will be a reduction of violence against women, but feels that this would be an appropriate penalty for this kind of sexual assault.

Opponents' Testimony:
NONE

Questions From Committee Members and Responses:
NONE

Closing by Sponsor:
Senator Towe closed SB 29.

EXECUTIVE ACTION ON SB 14

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-6-92

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Blaylock			
Senator Blaylock	X		
Senator Rye	X		
Franklin	X		
Lane	X		

FC08

Attach to each day's minutes

EXHIBIT 4
DATE 1-6-93
BILL NO. SB29

Bob Court
2909 Breick Lane
Billings, Mont
59105

Legislative Council
State Capitol
Helena. Mont. 59620
Re: Bill Drafting Request

Ladies And Gentlemen:

I have asked Mr. Tomas Towe to submit a bill to you in regard to the crime of gang rape. I feel at this time that the law is not sufficiently strong enough to deter gang rape at this time.
I would come to Helena testify and answer any questions on my strong beliefs in this matter except I am on dialysis, and oxygen here in Billings and also being on fixed income it is impossible for me to travel outside of Billings.
Please note communications to you dated Oct 30, 1991 and enclosure copy of the bill as written up by Mr. Towe.
My interest is on lines 9 through 14. I would also like to see submitted in this language a no parole entrance for the first 5 years.
My reasons for such a strong bill are many, but will shorten it up to say the no matter what the reputation or lifestyle of a lady, or her social standing, there is no reason for more than one person to rape her for sexual pleasure knowing that the law will go easy on those convicted of this crime. I feel this is animal behavior and should come to a stop. I bore witness to a gang rape in 1937 and when this crime came to court the rapist got off with just a small fine and it was ruled that boys will be boys and the lady was just Carny Trash. I was awarded damages for being beaten to the point I was hospitalized. She was not even given this benefit. I am asking that this bill be given consideration and passed as drafted
Respectfully

Bob Court

R.W. (Bob) Court

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 13, 1993, at 10:00 a.m.

ROLL CALL

Members Present:
Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. John Harp (R)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: NONE

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 117
Executive Action:	SB 12
	SB 19
	SB 29
	SB 64

HEARING ON SB 117

Opening Statement by Sponsor:
Senator Halligan, District 29, opened by stating that SB 117 would place family disputes into a mediation or resolution dispute oriented format. SB 117 would authorize mediation in family law proceedings. It would be voluntary, to allow mediation to occur. If a dissolution was submitted to a Court, it would automatically assign it to a special person to handle

EXECUTIVE ACTION ON SB 19

Motion:
Senator Blaylock moved SB 19 DO PASS.

Discussion:
Senator Rye would like to go on record voting no. Senator Rye stated the School Board Association had a legitimate point that SB 19 would remove a bargaining chip which is traditionally in school board teacher negotiations. His aversion to any increase in litigation is also a factor in his decision.

Vote:
SB 19 DO PASS. Senators Rye, Harp, Grosfield voting no.

EXECUTIVE ACTION ON SB 29

Motion:
Senator Towe moved to amend SB 29.

Discussion:
Senator Towe explained the amendments.

Senator Grosfield questioned Senator Towe on the terminology of the first amendment. Senator Towe replied the word "conviction" would create confusion. The Criminal Code most of the time uses the word "committed" and not "convicted." That is why the word was changed.

Senator Grosfield asked Senator Towe whether SB 29 is close to treading on the concept "innocent until proven guilty." Senator Towe explained when dealing with two or more alleged offenders, one of them is convicted, and the other implicated but judged innocent, there is no longer a crime of gang rape. If the word "committed" is used the County Attorney in each trial would have to prove beyond a reasonable doubt that the offenses occurred or they wouldn't get a gang rape conviction with the higher penalty.

Senator Crippen asked Mr. Conner, Assistant Attorney General, about the language in SB 29. Mr. Conner stated the word "conviction" ought to be left in SB 29. If SB 29 is changed to two or more persons who "committed" the offense, the defendant would go to prison for a longer amount of time even though they were not convicted. In our system, defendants have to be convicted of a crime before going to prison. Mr. Conner felt "conviction" should be left in and maybe define the term gang rape. The word "conviction" is defined in the Code as a judgement of conviction after trial or a plea of guilty.

Vote:

Motion carried unanimously to amend SB 29.

Discussion:

Senator Blaylock asked if Senator Towe would strike line 1 from the amendments. Senator Towe said he would remove line 1.

Senator Towe questioned Mr. Conner about accountability. Mr. Conner replied the language defines accountability. Under the theory of accountability if a person aids, abets, or assists another person in a crime then that person is equally guilty of the crime. Under the law they can receive the same penalty as the statute provides for the crime.

Senator Towe asked Mr. Conner whether we should define gang rape and a penalty. Mr. Conner replied it would be cleaner if defined, but does not feel it would cause a conviction to be overturned if it was not.

Senator Towe asked if the Committee would like to define a new defense and penalty for SB 29. No request was made.

Motion:
Senator Towe moved SB 29 DO PASS.

Senator Crippen asked Ms. Lane whether the amendment that was stricken, was better language than what is in SB 29 now. Ms. Lane answered that it was.

Senator Halligan questioned Senator Towe about the penalties of rape. Senator Towe referred to a letter from Bob Court which stated, "there should be a more severe penalty for gang rape than rape." Senator Towe agreed. The offense of rape requires a penalty of not less than 2 years, or more than 20 years. Under SB 29 the offense of gang rape would require a penalty not less than 10 years or more than 40 years.

Chair Yellowtail told the Committee that Senator Towe deleted part one of the amendment. The Committee will address part 2, 3, and 4 of the amendment.

Senator Crippen questioned Senator Halligan about the 10 year provision and the flexibility the judges have in suspending or modifying sentences. Senator Halligan replied mandatory minimums exactly what they mean. Mr. Powers also replied, if the statute says not less than a certain period of time, the Court can suspend or defer the sentence after the minimum time is served.

Senator Towe asked Senator Crippen whether he wanted to reduce the 10 year provision. Senator Crippen agreed a two year minimum sentence is not enough, but judges need to have flexibility in suspending or deferring a sentence.

Senator Blaylock stated bills like these have gone through the

legislature toughening up and sending people to prison for longer terms. Judges have responded and Deer Lodge Prison is full. The prison is a large part of the deficit problem. Senator Blaylock asks if we would be doing our duty by saying we are going to get tougher and send more people to prison for longer terms when we can not really afford to do that.

Motion:
Senator Towe made a substitute motion that SB 29 be amended on page 2 line 13 to strike 10 and insert 5.

Discussion:
Senator Towe stated his belief in leaving as much discretion as possible to the judges because of situations that arise. Looking at the offense generally, you may think we can not think of anything in which we would want less than a 10 year sentence. It is conceivable that could happen, so we ought to be setting policies and less mandates.

Senator Blaylock asked Senator Towe whether judges in Montana have been abusing their duties and about increasing the penalty for gang rape. Senator Towe stated the most important part of SB 29 is allowing a judge to increase a penalty from 20 to 40 years. Under the present law Judges cannot increase the penalty, therefore this would be an advantage. Senator Towe stated to his knowledge Montana has not had a gang rape incident, but it is important to address the issue. Senator Towe was not aware of any judges abusing the situation.

Senator Bartlett asked if the penalty was a five year minimum, but given the circumstances of the case, not mandatory. Mr. Conner answered that is correct.

VOTE:
Motion CARRIED TO AMEND page 2 line 13. Senator Brown voting no.

Discussion:
Senator Rye told the Committee the important part of SB 29 is personal accountability and the fact that if everybody else is doing it, that is not an excuse, nor a defense. Refusing to get apart from the crowd who is doing something wrong, is considerably more serious than doing something wrong by yourself. Senator Rye feels SB 29 is commendable and should pass.

Vote:
SB 29 DO PASS AS AMENDED by roll call vote. 9 Senators voting yes, 3 Senators voting no.

EXECUTIVE ACTION ON SB 64

Discussion:

SENATE STANDING COMMITTEE REPORT

January 13, 1993

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration Senate Bill No. 29 (first reading copy -- white), respectfully report that Senate Bill No. 29 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 2, lines 10 and 11.
Following: "victim" on line 10
Strike: remainder of line 10 through "time," on line 11
Insert: "in an incident in which each offender was present at the location where another offender's offense occurred during a time period in which each offender could have reasonably known of the other's offense,"

2. Page 2, line 13.
Strike: "10"
Insert: "5"
Strike: "25"
Insert: "40"

3. Page 2, line 14.
Strike: "$100,000"
Insert: "$50,000"

-END-

MC Amd. Coord.
___ Sec. of Senate

ROLL CALL VOTE

SENATE COMMITTEE Judiciary BILL NO. 29

DATE 1-13-93 TIME 11:10 A.M. P.M.

NAME	YES	NO
Senator Yellowtail	X	
Senator Doherty	X	
Senator Brown		X
Senator Crippen	X	
Senator Rye	X	
Senator Grosfield	X	
Senator Halligan		X
Senator Harp	X	
Senator Towe	X	
Senator Bartlett	X	
Senator Blaylock		X
Senator Franklin	X	

T. Decaluwe
SECRETARY

Bill Yellowtail
CHAIR

MOTION: motion recommended do pass as amended.

Enc

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0023	AKLESTAD, GARY		REVISE LAW ON REMOVAL OF CHILDREN FROM THE HOME IN CASES OF ABUSE OR NEGLECT			
	2/23	3/16		CONCUR AS AMENDED 3/26 VOTE: 12-6		3/27
SB0024	BLAYLOCK, CHET		CLARIFYING EMPLOYER-PAID INS. PREMIUMS ARE NOT MARITAL DISCRIMINATION			
	1/12	1/21		CONCUR 1/21 VOTE: 18-0		1/22
SB0029	TOWE, TOM		PENALTY FOR GANG RAPE			
	1/20	1/29		CONCUR AS AMENDED 2/3 VOTE: 14-4		2/05
SB0037	TOWE, TOM		CREATE OFFENSE OF STALKING AND PROVIDE FOR RESTRAINING ORDERS			
	1/30	3/02		CONCUR AS AMENDED 3/17 VOTE: 18-0		3/18
SB0042	HARP, JOHN		CLARIFY SERVICE OF PROCESS IN ACTIONS AGAINST THE STATE			
	1/09	1/13		CONCUR 3/9 VOTE: 18-0		1/14
SB0046	HALLIGAN, MIKE		UNIFORM PARTNERSHIP ACT			
	2/02	3/09		CONCUR 3/9 VOTE: 18-0		3/10
SB0051	BIANCHI, DON		APPLICANT FOR GAMBLING OPERATOR'S LICENSE MAY BE GRANTED TEMPORARY AUTHORITY			
	3/01			N/A VOTE:	BUSINESS & LABOR	
SB0064	DOHERTY, STEVE		EXEMPT ATTORNEYS' EMPLOYEES FROM PROCESS SERVER REGISTRATION REQUIREMENTS			
	1/18	1/22		TABLED ON 01/27 VOTE: 14-3		
SB0068	BLAYLOCK, CHET		REMOVE TERMINATION OF GOVERNMENTAL TORT LIABILITY LIMITS			
	2/01	3/09		CONCUR 3/16 VOTE: 17-1		3/12
SB0070	BROWN, BOB		COURT DISPOSITION OF TROUBLED YOUTH REQUIRING DEPT. FAM. SERV. TO SPEND $			
	2/01	3/10		CONCUR 3/16 VOTE: 17-1		3/17
SB0078	GAGE, DEL		CITY ATTY. MAY REPRESENT STATE IN CERTAIN DUI LICENSE SUSPENSION HEARINGS			
	1/28	2/04		CONCUR AS AMENDED 3/26 VOTE: 13-5		3/27
SB0093	BECK, TOM		ELIMINATE HANGING AS FORM OF CAPITAL PUNISHMENT			
	1/30	3/04		CONCUR 3/4 VOTE: 10-8		3/04

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on January 29, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: Rep. Karyl Winslow (R)

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: HB 282, HB 121, HB 258, SB 29
Executive Action: None

HEARING ON HB 282

Opening Statement by Sponsor:

REP. TIM WHALEN, HD 93, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW RELATING TO JOINT SEVERAL LIABILITY IN CIVIL CASES; PROVIDING THAT A PERSON WHOSE

the fees should pick up their responsibility. **Mr. Alke** said there is no way a plaintiff attorney would not know who's going to be on trial.

Closing by Sponsor:

REP. WHALEN said there are two issues to this bill: 1) What public policy should be with respect to fault. Should those individuals that are minimally at fault carry some of the proportion of fault. Plaintiff's lawyers don't like to sue. 2) It is an insult when a jury makes a decision to assign liability without proper records. As a matter of public policy, should the person who is 10 percent at fault pick up the tab, or should a law be kept in place that an innocent victim could pick up the tab? Although it may not be fair to the person who is only 10 percent at fault, at least that person contributed to the injuries to the person who is not at fault at all. Right now, the bill says unless a person is 50 percent at fault, and there is a defendant who can't pay, the person who picks up the tab is usually the injured person. What the committee is being asked to do is to decide what is the least unfair.

HEARING ON SB 29

Opening Statement by Sponsor:

SEN. TOM TOWE, SD 46, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE PENALTY FOR SEXUAL INTERCOURSE WITHOUT CONSENT WHEN TWO OR MORE OFFENDERS WERE INVOLVED; AND AMENDING SECTIONS 45-5-503 AND 46-18-231, MCA."

SEN. TOWE said this bill involves gang rape, where two or more persons are involved in the same victim's defense against the same victim. **EXHIBIT 3**

Proponents' Testimony:

Eliza Lake, Montana Women's Lobby, stated she solicits support for SB 29.

Opponents' Testimony: None.

Informational Testimony: None.

Questions From Committee Members and Responses:

REP. BILL TASH said lines 14 and 15 on page 1 are not gender neutral and recommended they be changed accordingly. He also inquired about changing the $50,000 fine on page 2, line 3 to $100,000. **SEN. TOWE** said that the bill is being changed to gender neutral, and there are no plans to change the fine from $50,000 to $100,000, basically, because not many people have that kind of funds available.

REP. ANGELA RUSSELL asked **SEN. TOWE** if there are more of these cases in court. **SEN. TOWE** said he is not sure if there are more or fewer cases of gang rape, but the purpose of this bill is to deter any more from occurring. He said cases of date rape appear more in court than any other kind of rape. **REP. RUSSELL** also mentioned that due to the trauma of rape, many victims choose not to come to court to testify, and is there any way the courts can aid in getting the victims to testify? **SEN. TOWE** said that many rape victims can videotape their testimony so they don't have to present their case in court.

REP. RANDY VOGEL asked **SEN. TOWE** if he considered including "medical costs" after reasonable costs on page 2, line 24. **SEN. TOWE** suggested adding "and costs of" after reasonable costs.

Closing by Sponsor: None.

HEARING ON HB 121

Opening Statement by Sponsor:

REP. RUSSELL FAGG, HOUSE DISTRICT 89, Billings. A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A GROSS NEGLIGENCE LIABILITY STANDARD FOR CERTAIN DAM OWNERS; EXTENDING THE LIABILITY STANDARDS TO CERTAIN DAMS IN ADDITION TO PERMITTED DAMS; EXTENDING THE LIABILITY STANDARDS TO NONFEDERAL DAMS ON FEDERAL PROPERTY; ESTABLISHING A PENALTY; AMENDING SECTIONS 85-15-107 AND 85-15-305, MCA; AND REPEALING SECTION 85-15-501, MCA."

REP. FAGG stated HB 121 tries to encourage the construction of dams. By saying that somebody moves underneath an existing dam, i.e. builds a house under an existing dam, and the dam fails, the person who moved underneath the dam would have to prove gross negligence on the part of the dam owner for the dam owner to be liable. In all other cases where the person was living under the dam before it was built, then it would be under regular negligence standards. **EXHIBIT 4**

CHAIRMAN FAGG introduced **Michael Kakuk, Staff Attorney, Water Policy Committee.** There are three issues of dam safety: 1) the acceptable degree of risk, public safety, and allocation of that risk; 2) developing a mailing list of 150 county commissioners, disaster emergency services personnel, high hazard dam owners and engineers involved in the design, structure and engineering of dams; and 3) public policy funding. The questions asked are what degree of risk is acceptable around a high hazard dam, and who should bear the burden of that risk. **EXHIBIT 5**

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 1-29-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow		✓	
Rep. Diana Wyatt	✓		

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EXHIBIT #3
DATE 1-29-93
SB 29

Bob Court
2909 Overlook Lane
Billings, Mont
59105

Legislative Council
State Capitol
Helena. Mont. 59620
Re: Bill Drafting Request

Ladies And Gentlemen:

I have asked Mr. Tomas Towe to submit a bill to you in regard to the crime of gang rape. I feel at this time that the law is not sufficiently strong enough to deter gang rape at this time.
I would come to Helena testify and answer any questions on my strong beliefs in this matter except I am on dialysis, and oxygen here in Billings and also being on fixed income it is impossible for me to travel outside of Billings.
Please note communications to you dated Oct 30, 1991 and enclosure copy of the bill as written up by Mr. Towe.
My interest is on lines 9 through 14. I would also like to see submitted in this language a no parole entrance for the first 5 years.
My reasons for such a strong bill are many, but will shorten it up to say the no matter what the reputation or lifestyle of a lady, or her social standing, there is no reason for more than one person to rape her for sexual pleasure knowing that the law will go easy on those convicted of this crime. I feel this is animal behavior and should come to a stop. I bore witness to a gang rape in 1957 and when this crime came to court the rapist got off with just a small fine and it was ruled that boys will be boys and the lady was just Carny Trash. I was awarded damages for being beaten to the point I was hospitalized. She was not even given this benefit. I am asking that this bill be given consideration and passed as drafted
Respectfully

Bob Court

R.W. (Bob) Court

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 3, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	HB 307, HB 272
Executive Action:	HB 272, HB 307, HB 236, HB 267 HB 258, HB 121, HB 323, SB 29

voting for the amendment were **REPS. BROWN, BERGMAN, BROOKE, MCCULLOCH, RUSSELL, TOOLE** and **WYATT.** Those voting against the amendment were **CHAIRMAN FAGG, REPS. VOGEL, BIRD, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH, WHALEN** and **WINSLOW.**

REP. TOOLE said cases like this will be thrown out before they even get to court. He believes there are better ways to do this; he'd rather see some sort of limit on the overall liability being paid out.

Motion/Vote: **CHAIRMAN FAGG** moved **Mr. Petesch's** amendment for a new section in the applicability clause at the end of the bill, which would say, "This act applies to causes of action occurring on or after October 1, 1993." The amendment passed 15-3 with **REPS. TOOLE, RUSSELL** and **BROWN** voting no.

Vote: **REP. VOGEL MOVED HB 121 DO PASS AS AMENDED.** Motion carried 10-8. Those voting for the bill as amended are **CHAIRMAN FAGG, REPS. VOGEL, BERGMAN, CLARK, GRIMES, RICE, SAYLES, SMITH, TASH** and **WINSLOW.** Those voting against the bill as amended are **REPS. BIRD, BROOKE, BROWN, MCCULLOCH, RUSSELL, TOOLE, WHALEN** and **WYATT.**

EXECUTIVE ACTION ON HB 323

Motion: **REP. BROWN MOVED HB 323 DO PASS.**

Discussion:

REP. BROWN stated that the committee should ignore the kind of haphazard amendments proposed and stay with the bill as originally written. It may not give judges any more authority than they generally have, but it focuses their attention to the fact that they have that authority. He believes the rest of the proposed amendments complicate the issue; therefore, he supports the bill the way it is.

REP. RICE distributed a letter from **John Conner, Assistant Attorney General, Bureau Chief, County Prosecutor Services Bureau. EXHIBIT 4 REP. RICE** said the one positive aspect of the bill is that perhaps it would be helpful to justices of the peace if this specific condition was placed in the statute.

Vote: **HB 323 DO PASS.** Motion carried unanimously 18-0.

EXECUTIVE ACTION ON SB 29

Motion: **REP. BROWN MOVED SB 29 BE CONCURRED IN.**

Motion/Vote: **REP. WHALEN** moved to amend the bill on page 2, line 24: striking the word "counseling" from the original language of "reasonable and medical counseling costs." The amendment carried unanimously 18-0.

Motion: **REP. BROWN MOVED SB 29 BE CONCURRED IN AS AMENDED.**

Discussion:

REP. RICE said he is concerned about the language on page 2, subsection (b). He asked **Mr. Petesch** to search for better language to describe what is written. **Mr. Petesch** said this language was inserted by the Senate, and the explanation given to him was that the Senate was concerned that the original language, could be interpreted to mean "simultaneously." The language inserted by the Senate was intended to make the criminal offense apply to anyone who is present, and participated in, an act of sexual intercourse without consent with the same victim.

REP. BERGMAN stated she was also concerned about the language on page 2, line 16, "increases the penalty," and asked **CHAIRMAN FAGG** to clarify that section of the bill. **CHAIRMAN FAGG** said that Section 2, subsection (b) is new language under **SEN. TOWE'S** bill. The Senate moved the imprisonment time from 10 to 5 years, and the $100,000 fine to $50,000, but that is still an increase over current statute. The increase is as follows: two years sentence, as a minimum, for sexual intercourse without consent, under **SEN. TOWE'S** bill; with two or more persons, the minimum sentence is five years.

REP. RUSSELL said federal statutes have a standard term of imprisonment or fine for rape, and asked **CHAIRMAN FAGG** how state guidelines compare to federal statute. **CHAIRMAN FAGG** said he did not know the federal sentencing structure on rape or gang rape and asked **Mr. MacMaster** to assist. **Mr. MacMaster** said he did not have the answer; however, there are a number of federal crimes without a state counterpart, and he doesn't think they necessarily follow each other as to penalties. **Mr. MacMaster** said his impression is the federal sentence is on the books, but the penalty on the books is often higher for federal offenses than state offenses.

REP. BERGMAN asked **CHAIRMAN FAGG** how this bill is different from a lone rapist, and whether two or more offenders make it worse than if a person were a lone offender. She asked why the penalty should be increased just because there's more than one offender. **CHAIRMAN FAGG** said that **SEN. TOWE** felt it was more grievous to have more than one individual raping a person as opposed to a single individual. It is a policy decision.

Vote: **SB 29 BE CONCURRED IN AS AMENDED.** Motion carried 14-4. **REP. VOGEL** will carry the bill to the House floor. Those voting for the bill were **CHAIRMAN FAGG, REPS. VOGEL, BROOKE, BROWN, CLARK, GRIMES, MCCULLOCH, RICE, RUSSELL, SAYLES, TASH, TOOLE, WINSLOW,** and **WYATT.** Those voting against the bill were **REPS. BIRD, BERGMAN, SMITH** and **WHALEN.**

HOUSE STANDING COMMITTEE REPORT

February 4, 1993

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 29 (third reading copy -- blue) be concurred in as amended .

Signed: _____

Russ Fagg, Chair

And, that such amendments read: Carried by: Rep. Vogel

1. Title, line 6.
Strike: "SECTIONS"
Insert: "SECTION"
Strike: "AND"

2. Title, line 7.
Strike: "46-18-231"

3. Page 2, line 24.
Following: "reasonable"
Insert: "medical and counseling"
Strike: "of counseling"

4. Page 3, line 2 through line 3 of page 4.
Strike: section 2 of the bill in its entirety

-END-

Committee Vote:
Yes 14, No 4.

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 2-3-93 BILL NO. SB 29 NUMBER 18

MOTION: Motion to pass carried 14-4
Rep. Vogel carried the bill to the House floor.

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird		✓
Rep. Ellen Bergman		✓
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	